In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-423

OSCAR SQUELLA-AVENDANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner and several co-defendants were indicted in the Southern District of Florida for substantive offenses and conspiracy to violate 21 U.S.C. (1964 ed.) 174, arising from a shipment of 200 pounds of cocaine into the United States from Chile. After a pre-trial hearing, the district court ordered the cocaine suppressed as unlawfully seized. The government appealed under 18 U.S.C. 3731 to the court of appeals, which reversed the ruling of the lower court. Petitioner's principal contention is that the officers gained entry into the premises without announcing their purpose in violation of *Miller* v. *United States,* 357 U.S. 301. This contention is answered by the comprehensive

447-250—71

opinion of the court below (Pet. App. A 19–21). As that opinion points out, the circumstances surrounding the entry justified the officers "in being 'virtually certain' that the occupants of the apartment were aware of the impending arrest" (Pet. App. A 19). The opinion, on which we rely, further sets forth the relevant facts and properly concludes that the warrantless arrests were justified by the exigencies of the circumstances and that the seizure of the cocaine, most of which was in plain view on the floor, was a valid incident of the arrests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971